

Panaji, 18th March, 1993 (Phalguna 27, 1914)

SERIES II No. 51



# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

### SUPPLEMENT

#### GOVERNMENT OF GOA

##### DEPARTMENT OF LABOUR

##### ORDER

No. 28/56/84-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.  
Subhash V. Elekar, Under Secretary, (Industries and Labour)  
Panaji, 1st September, 1988.

#### In The Industrial Tribunal

##### Government of Goa

##### At Panaji.

(BEFORE SHRI S.V.NEVAGI, HON'BLE PRESIDING OFFICER)

Reference No.: IT/6/87

Shri Suresh A. Kerkar .... Workman/Party I

V/s

M/s Hindustan Ciba-Geigy Ltd. ... Employer/Party II

Workman represented by Adv. B.G.Kamat.

Employer represented by Shri C.V.Pawasker.

PANAJI, DATED.: 10.8.88

##### AWARD

This is a reference made by Govt. of Goa by its

order No. 28/56/84-ILD dated 24th Feb., '87 with an annexure scheduled thereto which reads as follows:

" Whether the action of the management, M/s Hindustan Ciba-Geigy Limited, Corlim, Ilhas-Goa in terminating the services of Shri Suresh A. Kerkar, Watchman with effect from 7.2.1984 is legal and justified ?

'If not, to what relief the workman is entitled to ?".

2. After the Govt. reference was received in this office, notices were issued to the workman as well as the management of Hindustan Ciba-Geigy Ltd., Party II and the statement of claim is made by the workman/ Party I on 20th Nov., '87. To this the Party II has filed its written statement dated 30th December '87 through its General Works Manager at St. Monica Plant, Goa. Thereafter the workman filed rejoinder on 19.2.88. In fact after filing of the rejoinder the pleadings were complete and the matter was supposed to be set out for framing issues. Accordingly, I framed 5 issues on 11th March, 1988. On the same day the Party No. II Company has filed rejoinder to the rejoinder of the workman/Party No. I. In fact there is no provision for filing re-rejoinder if the re-rejoinder is filed and the pleadings are on record. The issues framed by me read thus:

1. Do the employer/Party No. II prove that a fair and impartial enquiry was held against the workman?
2. If so, whether the employer further proves the action was taken against the workman, having regard to the allegation proved and that it had lost confidence in the workman?
3. Whether the workman/Party No. I proves that the enquiry was not proper and was against the principles of natural justice?
4. Whether the action of the management of M/s Hindus-

tan Ciba-Geigy Ltd., Corlim Ilhas Goa in terminating the services of Shri Suresh A. Kerkar is just and proper and whether the same calls for any interference?

5. What relief, if any, is the workman Suresh A. Kerkar entitled to?

3. Out of the above 5 issues, the issues 1,2&3 relating to the domestic enquiry conducted by the management of Party II are set out for preliminary hearing and the evidence is recorded for the limited purpose of finding whether a fair and impartial enquiry was held against the workman and whether in view of the facts brought on record and proved the management had lost confidence in the workman and whether the employer had taken the action because of the loss of confidence. The 3rd issue is whether the enquiry was not proper and was held against the principles of natural justice. While hearing these three preliminary issues some facts have to be recapitulated and the facts have to be stated in brief at this stage to know and understand the circumstances under which the Company was constrained to direct a domestic enquiry against the workman who was working as a Watchman in the Company. From the admitted facts which are brought on record and which are plain and simple the workman Suresh Kerkar started his services with the Company as a Watchman from 14.4.1972. In the year 1983 he had put up a service of more than 10 years and had become entitled to several benefits available to a workman including the privilege leave. Accordingly, the workman was granted privilege leave from 16.8.83 to 30.8.83. The leave was granted during the course of the conduction of the official business and there is no controversy whatsoever about the grant of this leave and about the workman, Watchman proceeding on leave. Before the expiry of the leave the workman sent another application for extension of leave on 29.8.83, and he had sought the extension up to 14.9.83. He had sought the leave on Medical grounds and the medical certificate which was not sent along with the application for extension of leave was subsequently sent by him on 3.9.83. The certificate was issued by one R.M.P. by name Dr. Chodankar.

4. The workman who was under the impression that the extension of leave up to 14.9.83 should have been granted by the Company appeared at the gate of the Company on 15.9.83 and the workman was refused entry into the factory premises. Not only this, but the workman was served with a charge sheet together with the order of suspension. While the initial application for leave and the application for extension of leave were squarely as per rules and while the leave sought for was available to the credit of the workman the Company was prompted to issue the charge sheet to him together with the order of suspension. And what prompted the Company to take this action is a parallel episode. The question is whether on the basis of the parallel the action taken by the Company was infact necessary and whether the workman had really committed any breach of the standing orders of the company and the Standing Order No.31 in particular.

5. The case papers of the enquiry are produced on record and they are at Exb.E-1 and the first letter of suspension together with charge-sheet is at page 1 in the enquiry papers and this letter is self explanatory and some facts have to be recapitulated from this letter to understand the circumstances under which the Company was prompted to take the action of suspension and issuance of a charge-sheet to the workman namely the Watchman, Suresh Kerkar.

6. In part No. 2 of the letter the Company has made reference to a News item published in the Marathi daily 'Nav Prabha' dated 30.8.83 and English daily 'The Navhind Times' dated 31.8.83 to the effect that "the workman was involved in a criminal case" "that stolen property was recovered from him" and "that he was arrested by the Ribandar Police along with a few others". The letter further states that the company had learnt that the workman was in police custody between 27.8.83 to 1.9.83 and that he was released on bail on 2.9.83. After giving this information which the company had received, the company had asked an explanation from the workman as to why he asked for extension of leave on 29.8.83 on the ground that he was suffering from typhoid and that a Doctor had advised him complete bed rest for 20 days w.e.f. 25.8.83. Before issuing this charge sheet the Company had written a letter to the workman dated 2.9.83 asking him to give the explanation about the information received by the Company. To this the workman sent a reply on 12.9.83 requesting to consider his request sympathetically. This is how while the workman has asked for extension of leave on medical grounds but the company was confounded to find out that the workman was in police custody though for a short period and seeing the nerve and guts to ask for leave on false grounds and under false pretext. Hence while this confusion prevailed, the Company thought it wise to verify the correct position and with this view the company Doctor by name G. K. Salekar was asked to visit the premises of the workman and the Doctor actually visited the residence of the workman on 9.9.83 and examined him at 4.30 p.m. to note that there was no trace of Jaundice revealed in the examination. It appears that the initial application for extension of leave was made on the ground that he was suffering from Typhoid but the subsequent certificate showed that he was suffering from Jaundice and vomiting. The company relied on the finding of the Company Doctor and on the basis of this, the Company held that the Party No. I/Workman had concealed the material and factual position from the company and attempted to obtain leave of absence on false pretexts of illness and attempted to obtain the leave by producing a medical certificate on false grounds. This is how the Company felt that the facts went to show that the act of the workman amounted to acts and actions which were subversive of discipline and good behaviour which is a misconduct as per the certified Standing Order No. 33(1) which was applicable to his case. This is the sum and substance of the charge-sheet issued to the workman and the charge-sheet was followed by the order of suspension and in due course the Domestic enquiry was initiated against the workman and on the basis of the recommendations of the Enquiry Officer the Party No. I was removed from service and

the removal was objected to by the workman who made an application to the Labour Commissioner where the conciliation proceedings ended in failure and upon the report of the Labour Commissioner the Government was inclined to make the reference to this tribunal as noted above.

7. While recapulating the facts which are discussed by me in brief as noted above there are two parallel episodes which have got to be taken into consideration to understand whether the provisions of Standing Order No.33(1) of any other Standing Orders are really offended by the act of the workman. Whether it was necessary and incumbent upon the company to initiate a departmental enquiry against the workman for the single lapse if any which is termed by the company as a dishonest Act and which is subversive of discipline. At the cost of repetition I may state here that the action of the workman seemingly appeared to be innocent and a step taken in due course of the service with the company, because he was officially on leave from 16.8.83 to 30.8.83 and before the expiry of the leave period the workman sent an application on 29.8.83 for the extension of the leave up to 14.9.83 and he went to the company gate on 15.9.83 to resume his duty as a workman. This is one facet of the episode and this act of the applicant/workman is a normal act and he was within his rights to ask for the extension of leave which was available to his credit. This is how this one aspect of the matter is an innocent happening which happened during the working of the company which has several employees on its roll. The aspect which is seemingly innocent is not that innocent but this is an act of dishonesty according to the management of the company because the company was irked by the act of its employee watchman who was in fact in police custody between 27.8.83 to 1.9.83 but he falsely reported to the company by the application for extension of leave dated 29.8.83 that he was bedridden with fever namely he was suffering with Typhoid with effect from 25.8.83 and the Doctor had advised him complete rest, for 20 days. According to the company the factual position was quite the contrary and the submissions made in the application for extension of leave dated 29.8.83 were ex-facie-false. So the company felt that the Watchman who is an important part of the workers of the company was dishonest and he had suppressed material facts from the company. Hence the letter dated 2.9.83 was issued to him asking for his explanation and to the surprise of the management the workman sent a reply on 12.9.83 maintaining that he was sick and his case to be considered sympathetically. This is how these are two and different facets of the same episode and the action of the workman asking for leave which was legitimate and as of right in normal circumstances became an action calling for drastic action on the part of the company which first put him under suspension and simultaneously served him with the charge-sheet. Not only this but after putting the workman under suspension the company appointed Shri Shenoy, a Mech. Engineer in the company as an Enquiry Officer and this Enquiry Officer conducted the enquiry between 12-10-83 to 29-11-83 and the Enquiry

Officer recorded his finding that the charges were proved against the workman. What were the charges which the workman was to face in the domestic enquiry were: (1) Concealing material and factual position, (2) Attempting to obtain leave on false grounds of illness, (3) Obtaining and producing a medical certificate by making false representation to the doctor.

According to the Company all these three points were, if held proved were subversive of discipline and were acts of omission. The Enquiry Officer did uphold this contention of the company and recorded a finding holding the workman guilty of the charges and submitted the report to the General Manager and the Gen. Manager terminated the services of the workman giving rise to this Govt. reference. As the conduction of the domestic enquiry is the basis of the order of termination the issues regarding the fairness and otherwise of the domestic enquiry were framed by me and these issues are being treated as preliminary issues and I have to record my finding on these issues to know and understand whether proper enquiry was held against the delinquent; whether proper opportunity was given to the delinquent workman to defend his case and whether, the principles of natural justice are violated by the Enquiry Officer at all or any other laws and see whether the enquiry conducted before him was fair, just and proper. These are the aspects with which I shall deal and while dealing with them I shall first take a brief resume of the proceedings of the domestic enquiry which are produced in a file admitted into evidence at Exb. E-1.

8. The Enquiry Officer who was the Manager, Safety, Health and Security Department by name Shenoy has conducted the enquiry and he has produced the enquiry papers which are at Exb.1. The management's representative was one P. H. Naik who examined 6 witnesses on behalf of the management, to prove the charge levelled against the workman. The workman who was represented by one J. D. N. Kerkar has cross examined all these 6 witnesses. Not only this but he examined 3 witnesses besides himself on his behalf to dis-prove the charges levelled against the workman. The Enquiry Officer Shenoy states that he scrutinised the evidence that was led before him and ultimately came to a conclusion that the charge was duly proved against the delinquent workman and accordingly made a report which is at pages 87 to 93 in the enquiry report - Exb.1. He has meticulously studied the different aspects of the charge and has given grounds and reasons for which he came to the conclusion of holding the charges as duly proved against the workman. I shall discuss his report at a bit later stage and I shall see what workman has to say before me in this Government reference.

9. I have already recapulated the facts in this case and the workman was admittedly on leave according to the rules and the position that he was on leave which was a privilege leave from 16.8.1983 to 30.8.1983 is undisputed. This was the leave which was to his credit and he was within his rights in proceeding on leave and there should be no doubt on this aspect. The crucial and important period is between 27.8.83 to 1st Sep.,

1983 the period during which the delinquent was taken into custody by the Ribandar Police along with some others on the charge of theft. During the course of investigation the workman was taken to Belgaum in the Police Van for contacting some witnesses there. All these facts which had appeared in the newspaper are admitted by the workman. Hence, while the workman was on regular leave he was taken by the Police into custody on 27-8-83. His leave was to expire on 30-8-1983 and in normal circumstances he was to resume his duties as a Watchman on 1.9.1983. However, for reasons which were beyond his control and for the reason that he was in Police custody he could not resume the duties on 1st September, 1983. We can say that this was an unfortunate development over which the Party No.1 had no control. Hence, normally it was expected of him to go to the office on 2nd Sept., '83 after he was relieved from police custody to make a clean breast of everything and to explain the circumstances to his superiors and probably the matter would have ended there only. However, the workman resorted to some other method which can be termed as a false method because while he was in police custody and taken to Belgaum on 27.8.83 he managed to send a letter through a messenger on 29.8.83 asking for extension of leave till 14.9.83. What he did do was that he asked for leave extension on medical grounds and the height of the case is that he sent the medical certificate through a messenger on 3.9.83 informing the Superiors that he was suffering from Typhoid and the doctor had advised him complete rest. This was first false step taken by the workman. The management had in the meantime appraised him of the news paper report and by a letter dated 3.9.83 he was asked to explain the news paper item. The workman instead of placing the real facts before the management resorted to some false method and sent a reply speaking about his illness and asking for sympathetic consideration. The letter in reply was not quite convincing and hence the Company Doctor was asked to examine the workman and the Doctor by name G. K. Salekar actually visited the workman on 9.9.1983 and reported that no traces of jaundice were revealed in the examination of the workman. Be it noted here pertinently that the workman had initially claimed that he was getting treatment for typhoid and was advised complete rest, but the ailment was changed to jaundice and as per the medical certificate he was suffering from jaundice and vomiting. Dr. Salekar found no traces of jaundice and made a report accordingly. This is the position obtaining on 9.9.1983. Still the workman did not read the writing on the wall and he remained complacent till 14.9.83 the last day of the leave asked for by him and when he went to the Company gate on 15.9.83 to resume duties he was prevented and entry was denied and the order of suspension was served on him. The main and important aspect to be considered here is whether the Company adopted a wrong course and whether this was an attempt of victimisation of the workman. It appears that the workman is a victim of his own creation and when once he made a false statement through the application for extension of leave he continued the same falsehood and even in his evidence recorded

before me he continues the same false plea and for this reason I have to study his evidence recorded before me. He admits in cross examination that he was arrested by police on 27.8.83 and was in Police custody till 1st September, 1983 and on 29.8.83 he was at Belgaum and that too in police custody. Even then he sent an application through a messenger on 29.8.83 falsely mentioning therein that he was suffering from Typhoid and that Doctor had recommended him complete rest for 20 days. This application for extension of leave was not accompanied by a medical certificate and he produced the certificate of Dr. Chodankar dated 3.9.83, wherein it was recited that the Doctor had treated him from 29.8.83. This position clearly shows that what the workman states about his sickness is ex-facie false, because on the date of the alleged examination by Dr. Chodankar at some place in Goa, he was actually in the Police custody and that too at Belgaum and was brought back to Goa on 1.9.1983. Hence, the admission of the workman shows that he had asked for extension of leave on a false certificate and on a false ground. It is an admitted fact that because of his long service the privilege leave was available at his credit and even he could have asked just for extension of leave without giving the false cause that he was suffering from typhoid.

10. Usually it so happens that when a person states a falsehood at an initial stage the tendency to continue the same falsehood does increase and this is what has happened in the case of the present workman. He admits that on 2.9.83 the company's management had informed him by a letter that his statement in the application for extension of leave that he was suffering from typhoid was false. The Company have also stated that the application was not supported by a medical certificate. Hence, to fill in the gap the workman took another false step to procure a medical certificate on 3.9.83 from Dr. Chodankar and this certificate inadvertently states that the Doctor treated him from 29.8.83, the statement which is prima-facie false. The workman has to admit this. The further examination by Dr. Salekar on 9.9.83 is also admitted by the workman. According to him the Doctor cursorily examined him by just nothing beat of pulse and there was no proper examination. By this he wants to maintain that he was really sick on 9.9.1983. This shows that the tendency to state falsehood has not vanished and he was blissfully remained under the impression till 14.9.1983 that his leave was granted and he was to resume on 15.9.83 and on that day he came to know that the falsehood had recoiled on him. These are the bare and admitted facts. In normal circumstances the workman need not have resorted to such false and to some extent foolish tactics because he could have claimed the extension of leave as of right and about the arrest by police he could have explained that he was arrested mainly on suspicion. The position in law is very clear in this regard and the arrest by police does not involve moral turpitude and no stigma is attached to the person who is temporarily taken by police into custody for interrogation. Hence these bare facts could have been explained by the workman to seek the favour of the management and that would have been commensurate

with his honesty. However, he resorted to dis-honest ways and means and the question then is whether the workman would be held to be guilty of any breach of discipline at all, because whatever had happened is outside the premises of the Company and the workman had not done anything to offend the Standing Orders or to commit the breach of any Company rules during the course of his service as a Watchman. However, the management of the Company maintains that because the workman is a Watchman they have got to be more careful and this dis-honest attitude of the workman has brought the loss of confidence in the workman and on this count mainly the management has justified the action in terminating the services of the workman and that too after the due and proper conduction of a Domestic Enquiry against the workman. I shall now consider the evidence as regards the domestic enquiry, the report of the Enquiry Officer and then I shall study the position in law with reference to the voluminous case law cited on behalf of both the parties.

11. I have carefully gone through the case papers of the domestic enquiry which are at Exb.E-1 and the report of the Enquiry Officer which is at pages 87 to 93. Admittedly, full facility was given to the workman to put forth his case and he cross examined the 6 witnesses examined on behalf of the company with the help of his representative by name Mr. J.D.N. Kerkar. Not only this but he examined 3 witnesses besides himself. The evidence led before this court is the same evidence that was then before the Enquiry Officer. He carefully went through the evidence and he found that it was a proven fact that the party No.1 was in Police custody between 27.8.83 to 30.8.83 and was released by police on 2.9.1983. Hence the statement that the doctor whose certificate he had produced examined him on 29.8.83 is patently false. Further the ailment is changed from typhoid to jaundice. All these facts are self contradictory which have been properly considered by the Enquiry Officer to hold the charge of dis-honesty and mis-conduct as duly proved against the workman. While appraising the same facts and set up evidence, I have to see whether the misconduct related to discipline and whether proper domestic enquiry was conducted by giving the workman full opportunity to defend his case. In the case of Khardah & Co., V/s its Workman reported in 1963, II L.L.J. 452 S.C. his Lordship Justice Gajendra-gadkar has observed that domestic enquiry in industrial law has great significance and industrial adjudication attaches considerable importance to such enquiry. In the same ruling his Lordship has further observed that the care should be taken to see that the passing of the order of dismissal is not an empty formality. In another case reported in 1965 II, L.L.J. P-162, the Supreme Court has observed that Tribunal would have jurisdiction to go into the fact where the enquiry is defective. In the further case reported in 1971 II L.L.J. page 5999 his Lordship Vaidialingam of Supreme Court has elaborated that it is open to the management to rely on the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity

attached to the same. In the same ruling it has been further observed that the management has also got a right to justify on facts that the order of dismissal was proper.

12. If the legal principles are considered I find that the order of dismissal is passed at the end of the domestic enquiry which was just and proper and the enquiry was fair and impartial and the workman is given no scope to find faults in the same. There were allegations of mis-conduct against the workman though outside factory premises. The management however, took cognizance of the same to offer an opportunity to the workman to explain the correct position about the newspaper items. The workman instead of making an honest disclosure resorted to dubious ways and means due to which the management lost confidence in him. As observed by the Supreme Court in the case of Kamal Kishor Lakshiman reported in 1986 S.C. page 27 termination of the service on account of loss of confidence did not amount to retrenchment but it was an action justifiable before the court.

13. Upon a careful consideration of the facts and circumstances of the case, I hold that the services of the workman were terminated after holding a fair and proper enquiry and I find that the action of the management is just and proper and the same does not call for any interference. In the result, I pass the following order:

#### ORDER

It is hereby held that the action of the Management of M/s Hindustan Ciba Geigy Limited, Corlim, Ilhas Goa, in terminating the services of the Watchman, Suresh A. Kerkar, w.e.f. 7.2.1984 is just and legal and the same does not call for any interference.

In view of the above finding the workman is not entitled to any relief in this reference.

Inform the Government about the findings recorded in the case on the reference.

In the circumstances of the case, parties are directed to bear their own costs.

S. V. NEVAGI  
PRESIDING OFFICER  
INDUSTRIAL TRIBUNAL

#### ORDER

No. 28/2/88-LAB.

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required

under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 5th October, 1989.

**In the Industrial Tribunal**

**Government of Goa**

**At Panaji**

(BEFORE SHRI S.V.NEVAGI, HON'BLE PRESIDING OFFICER)

Ref. No.IT/15/77

Workmen ... Party I/Workmen

V/s

M/s Casa J. D. Fernandes ... Party II/Employer

Workmen/Party I is represented by Shri N.J.Rebello.

Employer/Party II is represented by Adv. G.K.Sardessai.

PANAJI.DATED.: 13.9.1989

**A W A R D**

This is a reference made by the Government of Goa, by its order No.CLE/1/ID(178)/IT-4/77/785 dated June 14, 1977 wherein the schedule annexed thereto reads as follows:

" Whether the following demands of the workmen of M/s Casa J.D.Fernandes, Panaji, Goa, are legal and justified?

1. Demand for Revision of Wage Scales for different categories of workmen as specified below:-

Group (1)	Factory Staff (2)	Scales (3)
I	Lino Operator, Camera Operator, Printer, Foreman, Composing Supervisor, Binding Dept.Incharge, General Mechanic of Printing Machinery etc.	Rs.350-30-480 - 35-690-40-770
II	Lino Compositor, Hand Compositor, Half Tone Etcher, Mounter, Driver, Treadle Machineman, Display Compositor, Binder Stitching Machineman, Ruling Machineman Perforator, Pinning machineman, paper cutter etc.	Rs.305-25-405-30 525-35-575
III	Lino Baller, Dark Room Assistant, Distributor, Block Room Assistant, Plate Grinder, Proof Puller, Lead Melter, Numberer Lino Etcher Plate maker, Cutter.	Rs.240-15-255-20 395-25-475

(1)	(2)	(3)
IV	Semi skilled baller, Oilman, Paper Folder, etc.	Rs.180-10-200 12½-250-15- 290-20-375
V.	Bearer, Peon, Sweeper, and other menial worker	Rs. 120-5-180 7-195-10-215

2. Demand for D.A. on the following basis:

Range of Basic salary	D.A. Applicable
RS. 100 to 200	110.00
RS. 201 to 300	130.00
RS. 301 to 400	150.00
RS. 401 to 500	170.00
RS. 501 to 600	190.00
RS. 601 and above	210.00

3. Demand for night shift allowance at the rate of 15% of the total wages

4. Whether the workmen are entitled for Variable Dearness Allowance and if so, at what rate?"

The schedule consists of the demands made by the Union of the workers namely Party No.I and Party No.II is M/s Casa J.D.Fernandes, Panaji, Goa, a concern which runs a Printing Press as well as a Book House. It is alleged that Party No.II also runs two sister concerns by name 'O'Heraldo' and 'Diario de Noite'. The two sister concerns are the News Papers and are not directly concerned with them excepting that the employees of the two News Papers get the benefit of the provisions of Palekar Award published in 1980. The Party No.I, Union had been negotiating with the employer for the revision of the pay-scale, last revision having been made as back as in 1968. Since 1968 there was no revision of pay-scales of the employees of Casa J.D.Fernandes and as such the Union by letter dated 17th Aug., '73 submitted the charter of demands to the proprietor of Casa J.D. Fernandes wherein the factory staff was placed in 5 groups and the Administrative staff was placed in 4 groups and different pay scales were proposed for the employees of the two categories. The demands made by the Union in the schedule on 16th August, 1973 were not acceptable to the Proprietor and the matter was brought before the Govt. of Goa and as stated above the Government of Goa in exercise of the powers conferred by clause (d) of Sec. 10 of the I.D.Act, 1948 referred the said dispute for adjudication to the Industrial Tribunal, Goa, which was constituted by Sec.7-A of the said Act. As per this reference there is only one issue namely whether the demands of the workmen of M/s Casa J.D.Fernandes are legal and justified and the list of the demands was included in the schedule.

After the registration of the dispute, the tribunal issued notices to both the parties who

appeared and filed their respective written statements. The Party I which has filed the written statement through its General Secretary on 23.12.78 has reiterated its demands and has given the schedule of demands wherein the workers are divided into 5 categories, different pay scales are claimed for the workers of these 5 categories and the Dearness Allowance is claimed on the basis of the salary ranging from Rs. 100/- to Rs. 601 and above. In addition to the proposed pay scales and the D.A. they have made a 3rd demand for night shift allowance at the rate of 15% of the total wages and the 4th demand is regarding the Variable Dearness Allowance. The Union has given the brief history of the charter of demands to justify their demand for the new scales and additional Dearness Allowance.

The Party II, proprietor had from the beginning not accepted the charter of demands and had resisted the claim before the government and the Party II filed its written statement reiterating its stand that the charter of demands made by the employees is not justifiable and that the employer is not in a sound financial position to meet the new demands of the Party I.

In his parawise statement in para No. 3 the employer states that the Union served a charter of demands on the employer in the year 1973 demanding exorbitant increase in their basic salary as well as other emoluments of the wage. According to them the Union did not make any efforts to justify the demands in the conciliation proceedings and since no settlement could be reached, the Conciliation Officer had to submit his failure report and thereby the Government of Goa was compelled to make a reference to this Tribunal for adjudication. After re-stating the schedule of demands of the Union, the employer has submitted in para 4 of the written statement that the demands made by the union are so exorbitant that most of the widely circulated daily newspapers would be unable to give effect to such scales and allowances. According to them the wages paid by the employer were both reasonable and fair compared to what other Presses of this size pay to their workmen. According to them taking into consideration the future prospects of the Units run by the employer, the employer is not in a position to meet the demands of the workmen covered under the order of reference. According to them the principle of Industry-cum-Region will have to be taken into consideration. In para 7 while admitting that the employer is expert in the Trade and all the partners have been trained in modern technique and allied trade, the employer has denied that the workers are meagrely paid and that the employer is making handsome profits in this business. In para 7 the employer states that the employer has settled the demands of the workers amicably before the Labour Commission in the year 1968 and since then there was no victimization or any attempt to split the workers by giving undue increments or other amenities. According to them in the settlement the employer had agreed for D.A. between Rs. 30/- to Rs. 70/- and not Rs. 20/- to Rs. 60/-. According to them the employer paid the V.D.A. at 40 paise per points upwards and downwards as the case may be adhering to All India Consumer Price Index

1949. According to the employer the payment of 40 paise per point cannot be termed as negligible. In para 12 the employer gives the history of the increase in wages and that in July, 1974 a substantive increase was given in the wages ranging between Rs. 30/- to Rs. 37/- per month, besides the rise in V.D.A. from time to time. According to the employer its financial position did not permit it to give additional rise than the rise already given considering its financial position. According to the employer the settlement of 1968 had given substantive rise in the pay packet of the workers.

About the demand for night shift allowance the employer states in para 13 that there is no night shift and as such the question of payment of night shift allowance does not arise at all. It is further stated that because the 2nd shift is partly on night there is work for 7 hours allotted to the 2nd shift instead of usual 8 hours, which means that the workers of the 2nd shift have to carry out 87 percent of the normal work. In the written statement there is no specific statement neither of assertion nor denial about the two sister concerns namely M/s 'O Herald' and Diario de Noite. With the above pleadings and rival contentions the Tribunal was supposed to consider the main issue in the schedule under the reference made by the Government of Goa namely whether the demands are legal and justified and whether demand for revision of wage scales is justified. My predecessor who went through the pleadings felt that these two issues did not cover the entire pleadings and as such he framed the following additional issues.

#### ISSUES

1. Do the Workmen/Party I prove that their demands as mentioned in the order of reference dated 14.7.77 are legal and justified?
2. Do the Employers/Party II prove that the wages paid by them to the Workmen/Party I are reasonable and fair as compared to other Employers in the same field?
3. Do the Employers/Party II prove that their financial position does not permit them to improve the wages-structure for the workmen as demanded by them?

The parties went on trial with reference to these issues and oral evidence is led accordingly. The evidence for Party I consists of Shri Caetano Fernandes, Shri Dominic Dias and Shri Vasant Rama Naik. In addition to the above oral evidence some documents are also produced. On the basis of the oral and documentary evidence extensive submissions are made before me regarding the dispute in question. About the tenability of the demands, Adv. G. K. Sardesai submitted on behalf of the management that the claim is not at all justified and the wages which are being paid are reasonable.

According to the employer the wages earned by Party I have to be compared to the wages earned by workmen in similar concerns in the Region and he



placed much stress on the doctrine of Region-Cum-Industry which is enunciated in various rulings of the High Court as well as Supreme Court. He placed strong reliance on the two rulings of Karnataka and Bombay. The Karnataka ruling of a Division Bench reported in 1970 Lab. I.C. at page 337, is in respect of Gokak Mills Ltd., Petitioner and the Labour Union, Industrial Tribunal etc., is Respondent. The other Ruling relied upon by him is of Bombay High Court, Nagpur Bench, reported in 1979 Lab. I.C. page 45 in respect of U.K. Roller Flour Mills V/s Labour Union and Industrial Tribunal etc. These are the two main rulings on which strong reliance is placed by him and the principle of Region-cum-Industry is stated in-extenso in these two rulings. He also relies on two Supreme Court cases which are pertaining to Bombay Industrial Relations Act, 1946 reported in A.I.R. 1964, Supreme Court, page 689 and A.I.R. 1966 Supreme Court page 947. As against this, Shri Rebello on behalf of Party I mainly relies on a Supreme Court case reported in 1969 LLJ page 398, a case between workmen of Orient Paper Mills V/s Orient Paper Mills wherein the question of the minimum wages was discussed. He also relies on another authority reported in 1969 LLJ Vol. II page 782 which according to him is an authority directly on the points and the doctrine of Region-cum-Industry is also discussed in this authority. A brief resume of the evidence of the parties at this stage shows that both the parties have placed strong reliance on doctrine of Region-cum-Industry and before considering these principles, I shall have a brief resume on the evidence on record to understand the point on issue.

How far the parties have discharged the burden on them and how the evidence on record helps us in understanding the points and issue. In the charter of demands the Party I/Union has sub-divided its workers into 5 categories and according to them in 1968 the dispute was raised before the Labour Commissioner and there was some increase in the salary of the workers of M/s Casa J.D. Fernandes. According to them, since 1968 there is no change whatsoever in the wages of Casa J.D. Fernandes and the workers are getting the lowest wages as compared to the wages by workers working in concerns of similar category. For the purpose of comparison the union wants to rely on the pay revision of the workers of M/s O'Heraldo and Diariode Noite which are the sister concerns of M/s Casa J. D. Fernandes. All these three concerns are in the effective management of the same body and as a matter of fact Casa J. D. Fernandes which runs a Press and Stationery mart is a bigger concern than the two sister concerns of O'Heraldo and Diariode Noite. According to the Union the irony of fate is that the workers of the two smaller concerns in the news-papers establishment were governed by the Palekar Award and after the publication of the Award in 1980 the workers of O'Heraldo and Diariode Noite got substantive rise and other emoluments while the salaries of the Petitioner/Union remained stagnant with small rise on annual increment basis. According to them this disparity of wages between the workers of the three sister concerns is an important aspect

which this Tribunal has to take into consideration and according to them even the wages earned by O'Heraldo and Diariode Noite be taken as comparable instances and Party I/Union will be satisfied even if the lowest wages under the Palekar Award are awarded to them. This is the first demand made by them to claim increase in wages, Dearness Allowance, Night Shift Allowance and Variable Dearness Allowance.

The dispute was first raised by the Union way back in 1974 and the demand was made on 11.10.74. On the basis of this demand a reference was made in 1977 and since 1977 this reference is pending consideration before this Tribunal and in the meantime the workers of the two sister concerns namely the news papers were fortunate enough because the recommendations under the Palekar Award were published in 1980 and those workers got a substantial rise in their wages. It is a common ground that the workers of the two newspapers i.e. O'Heraldo and Diariode Noite got a substantial rise in 1980 but the main question for my consideration is whether the wages of those two news papers can be taken into consideration as parallel instances. The Party II has taken a strong exception to such comparison because according to them those two newspapers are not the sister concerns of M/s Casa J. D. Fernandes at all and secondly the service conditions of the workers working in the newspapers who are benefitted by Palekar Award are quite different from the service conditions of Party I workers of Casa J. D. Fernandes, Printing Press and they are not the workers in the newspapers. According to Shri G. K. Sardesai the position of news papers workers is quite different from the position of workers in the Press and for parallel example we have to take into consideration all workers, in any other Press and example of Borkar Press in Margao is cited in this case as a parallel example. I shall deal with this aspect of the case at a bit later stage and I shall dwell upon the other points which are raised before me in this matter.

According to Shri Rebello the Tribunal while directing the revision of Wages, has to take into consideration the financial capacity of the employer and the Party I places strong reliance on the balance sheets of Casa J. D. Fernandes which show the net profit earned by them since 1974. According to him the Union has made minimum demands and their demands cannot be termed as exorbitant or un-reasonable. According to him the minimum scale allowable to workers of this category may be awarded and the date on which the revision is to operate is immaterial and they have no objection if the date of operation is extended further beyond 1974 or 1977. As against this, Adv. G. K. Sardesai for the employer/Party II reiterated before me that the revision made in 1968 was just and reasonable and the Party II has been implementing the same since then and in revision of scales and increase in the wages will result in the enhancement of the financial burden on the Party II which Party II will be unable to bear in the circumstances of the case.



As the question of additional financial burden of Party II has to be considered I shall first go through the evidence of Party II to see what it has to say in the whole matter and what is the position of its financial condition and how the revision of pay scales and wages are going to add to the burden of the employers. Adverting then to the evidence of Shri John A. Fernandes a partner of Party II, he has produced the copies of the financial statements pertaining to the accounting years from 1974 to 1980, in his statement recorded on March 21st, 1983. In para no. 2 he says that M/s Casa J. D. Fernandes/Party II has a Printing Press and a Stationery Mart. According to him in 1974 most of the Printing Presses in Goa were comparable with each other. On the day of his deposition, however, there were few comparable Presses with his Press excepting the Borkar Printing Press from Margao and a Printing Press of Kamat of Mapusa. In his examination in chief comprising of just two paragraphs he does not elaborate in detail about the financial position of Party II and how the demand for increase in wages was going to burden him. He has also not attempted to state about the pay scales of his employees and how they were reasonable. Under the issue no. 2 and 3 framed in this matter the burden is cast on Party II to establish that the wages paid by them to workmen/Party I are fair and reasonable as compared to other employees in the same field and that their financial position does not permit them to improve the wage structure for the workmen as demanded by them. It has to be noted here that in his statement the Partner of Party II has not thrown light on its financial position and how the revision of payscales was going to increase the financial burden without there being comparable increase in the profits earned by them. Hence the Party II has left the things more or less for imagination and we have to explore through other evidence to find out the accurate financial position of Party II and the reply is in cross examination which need be considered at this stage.

In cross examination he says that the Borkar Printers is better than their Press. However, in the next sentence he admits that they have introduced modern machinery in their Press and they are letter press, offset and lately they have acquired an Electronic Cutting Machine. He admits that they have also a Photostating Machine in the premises of Party II and adds further that this machine belongs to Diario de Noite. In the next sentence he admits that he is also a partner in 'O Heraldo' and 'Diario de Noite'. In the next sentence he admits that between the three concerns Party II/M/s Casa J. D. Fernandes is better and more prosperous than O Heraldo and Diario de Noite. He admits that after the publication of Palekar Award the workers of O Heraldo are being paid the wages applicable to Newspapers. He states that because the Government accepted the recommendations of the Palekar Award he had to implement the same in his newspapers. He does not state how the position of the workers in the two sister concerns is not comparable to the workers of Party I which is also a Printing Press but which does not run a Newspaper.

Thus there is no doubt, a thin line of demarcation between the workers of Printing Press which runs a Newspaper. No body has attempted to distinguish between these two categories and to show how the work of News Papers is more difficult and how and whether it requires more skill as compared to the workers of a Printing Press. In the absence of any clear cut evidence on the point of the comparison between the two categories this Court will have to explore through the other evidence on record and to see whether the line of demarcation is really thin or whether the workers in Printing Press could be compared with the workers of the Printing Press which runs Newspaper and who are governed by the Palekar Award.

The matter being very old was adjourned for arguments from time to time and the last arguments which are in writing were submitted on behalf of the management on 28.4.89. To this the union has filed its written arguments on 5th May, 1989 and I am considering both these arguments together with the facts of the present case to understand the charter of demands which was submitted after 1974 and the Government reference came to be made in 1977. The decision is now being given by me in 1989. The three landmarks are very important because the position obtaining in July, 1974 is quite different from the position obtaining in June, 1977. It is in common knowledge that since 1977 there is a steady increase in the prices of commodities and properties and the position obtaining in 1989 is quite different from the position obtaining in 1974 or 1977. All these aspects have got to be taken in to consideration by this Tribunal to record a finding on the charter of demands and the revision of pay scales.

Shri Sardesai for the Party II/Employer makes a submission that in July, 1974 the employer gave a substantial increase in the wages of the workers ranging from Rs. 30/- to Rs. 37/- per month, besides the rise in V.D.A. from time to time. According to him, the demands made by the Union are quite excessive and the union ought not to compare the small printing press or for that matter even a newspaper with that of the big newspaper establishments which have large staff and larger facilities. According to him, no printing press or for that matter even a newspaper establishment in the Goa Region is paying wages as demanded by the Union. Hence the initial claim for the management is that the union be called upon to substantiate its claim on the basis of Industry-cum-regionwise. The second aspect stressed on behalf of the management is that the financial position of the employer ought to be taken in to consideration and while doing so the principle of Industry-Cum-Regionwise has also to be considered and it has to be seen whether the employer is in a fit financial position to meet the demands of the workmen covered under the terms of the reference. His third submission on behalf of the management is that all the workers have been given their annual increments upto date and since 1968 substantive rise have been given in the pay packet of the workers. The fourth point made out on behalf of the management is that the Union was to cite the examples

of the wages earned by the workmen of Borkar Printing Press which is situated in Margao and it is cited as comparable example of Printing Press. The management wants to state and strongly urge that there is no comparable instance so far as the Printing Presses in Goa are concerned and the Tribunal should be careful and cautious in granting revision of the pay scales of the Printing Press as the same would have some effect on the workmen in the other Printing Presses in Goa region.

Along with this line of argument the development which deserves to be taken into consideration is the publication of the Palekar award in 1980 and the consequential benefit accrued to the workmen of O'Heraldo and Diario de Noite. So the question posed for consideration would be whether the wages earned by the workmen of the two sister concerns of M/s O'Heraldo and Diario de Noite should be taken into consideration as comparable instances and whether the wages paid to the workmen of the Borkar Printing Press, Margao should also be taken into consideration and what should be the scales which are to be awarded in the year 1989 after a lapse of over 15 years and what should be the principle which would govern the wage structure being formulated in the year 1989. In order to understand the correct position of wages earned by the workmen I had called upon the parties to produce the charts showing the wages earned by the workmen formerly and what they are earning today and how the revision of wages would effect the wage structure of the workmen and what would be the extent of financial burden which would be cast on the management of M/s Casa J.D.Fernandes which runs the Press. I shall go through the evidence of different charts and the written submissions made on behalf of both the parties to arrive at a decision which would be commensurate with the position obtaining in 1989.

While considering the position obtaining in the year 1989 I propose to consider three landmarks namely the raising of the demands in 1974, the making of the reference by the Government u/s 10(1)(d) of the Act in 1977 and commencement of the recording of the evidence in 1982, onwards. For reasons beyond the comprehension of anybody or any of the parties, the matter was protracted till the appointment of a Presiding Officer in November, 1987 and even after the appointment of the Presiding Officer the matter still protracted and we have reached the stage of decision in 1989 September. Hence I am considering these 3 landmarks and I shall see what should happen to the scales demanded by Party I/Workmen by the Union representing the workmen and from which date the scales should be applicable. In this context I would like to mention that though the Party II/Employer has insisted on Industry-cum-Regionwise formula, the management has not produced documents to support that Party II is not in a position to accept any additional financial burden. What have been produced is just the balance sheets and that too of 1980. Their witness has not said anything about their financial position and his examination in chief is as brief as possible. With this state of affairs the Tribunal has to consider

the position in the year 1989. The management's witness John A. Fernandes, a partner of party II does admit that besides Casa J.D.Fernandes they own a book stall and the two papers namely O'Heraldo and Diario de Noite. He also admits that Party II/M/s Casa J.D. Fernandes is comparatively a bigger concern than the other two concerns and of late they have introduced new machines in this Press including the Electronic cutting machine, Letter Press and Offset. All these facts do indicate the sound financial position of the press and while considering this position, I do not feel that the demands are not just nor proper in the year 1989 and what is to be considered is the year in which the demands should be made applicable. I feel that the year 1982 should be the proper year from which the workmen of Party II should be placed in the new scales and I accept the scales as shown in the Government schedule, to make them applicable from 1st January, 1982.

About the demand for Dearness Allowance, I find that the same is just and proper and considering the fact that the demands are pending from 1977 and considering the present cost of living index and the fact that the workers have not received any considerable rise during the last 12 years, I am of the opinion that the request for the D.A. should be granted as claimed by the Party I/Union.

There is then the demand for Variable Dearness Allowance made by the Union and I consider the All India Consumer Price Index for industrial workers with base 1960=100.

There is then the demand for Night Shift Allowance. It is contended by the Union that the workers have to work at night shift and that puts strain on them and they have demanded 50% of the total wages as Night Shift Allowance. To counter this, it is stated by Party II in para.13 of the Written Statement that there is no night shift and as such the question of night shift allowance does not arise at all. The employer has however, clarified that the shift is partly in the night and in their second shift there is work for 7 hours instead of 8 hours and therefore the workers in the second shift have to carry out 85% of the normal work. I find substantial force in this clarification made on behalf of the employer and hence I hold that there is no substance for this demand for night shift allowance and the demand is rejected.

The question is whether the demands of the Union are justified and whether the workers are entitled to V.D.A. It is a well accepted fact that the workers are entitled to fair or living wages. This concept is well accepted by all the industries throughout India. Hence the Union representing the Union has a right to demand rise in salaries proportionate to the rise of the profit of the employer. So there is no reason why the demands of the Union should be termed as un-just or un-reasonable because the demands are pending since 1977. The burden lied heavily on the management to point out the heavy financial burden falling on them and to show whether the concern is

running at any losses. The evidence of the witness for the employer shows that there are financial transactions between all the four concerns and further balance sheets are not produced inspite of the specific direction to that effect. The Party II has not also produced any statement showing how the demands of the Union if granted will affect the working of the Press and how it would enhance the financial burden. Hence even though some rises are given in the year 1974, 1975 and 1976 they are not quite sufficient and I am of the opinion that the demands are just and reasonable.

The next question would be about the effect to be given to this demand retrospectively. Normally after the charter of demands are submitted the matter should have been thrashed out within a couple of years. The demands were made in 1974, the Govt. reference was made in 1977 and actual recording of evidence started in 1982. This is how there is an inordinate delay in the whole matter and so I feel it just and proper to give the retrospective effect to the demands from 1982 and the scales would be operative from 1st January, 1982. The question then being about the adjustment of the workmen in different categories who have earned from annual increments from time to time since 1974. For this purpose I had requested the parties to give the statistical data about the wages earned by the workmen as on today and I shall give directions about the implementation of the wages of scales by taking into consideration the salary statements and charts submitted before me.

I have carefully gone through the statements and charts submitted before me which show a substantial rise in the wages of the workman till 1987, because the charts are submitted in 1987. The charts will have to be taken into consideration while fixing the wages of individual workman whose number is now stated to be 66 as per this chart produced before me. The wage structure of the workmen shall be fixed by taking into consideration the salaries drawn by them and the wage scales granted by the Tribunal. As per the Govt. reference dated 14th June, 1977 what this tribunal was called upon to decide was whether the demands of the workman are legal and justified and for that purpose the charter of demands is annexed as schedule to the Govt. reference. So while considering whether the demands are legal and justified the tribunal has to see the circumstances under which the demands are made and whether there are justifiable grounds for making such demands. The Supreme Court have laid down different principles for the guidance of the tribunal while considering the question of the grant of demands. As back as in 1973 the Supreme Court has observed in the case of Karamchan Thapar Brothers 1973 II LLJ page 115 that "The principle is settled that if the paying capacity of the employer increases or the cost of living shows upward trend the industrial employees would be justified in making a claim for the re-examination of the rates of the dearness allowance." In the instant case we find that after the settlement of 1968 there is no increase in the wage structure of the employees and as such the demands can be said to be just and proper when there is an upward trend

in the living index and the cost of living. As observed by the Supreme Court in the case of Kamani Metals, 1967 II LLJ page 55, "As the time passes and prices rise, even fair wage fixed in the time being tends to sag downwards and then a revision is necessary. In the course of time even the addition of dearness allowance does not sufficiently make up the gap between the wages and cost of living and a revision of wages/or dearness allowance then becomes necessary." I am considering these principles of the Supreme Court so far as the question of Dearness Allowance and Variable Dearness Allowance is concerned. The demand of the D.A. as shown in the schedule is accepted as the just and proper in the circumstances of the case and the only question is what should be the V.D.A. and what should be its rate. At present the employer is paying V.D.A. at 0.40 paise per point with the increase in the price index with the points based on 1949/100 as the base. Such V.D.A. is already being paid to the workmen and I suggest that the management should pay the V.D.A. at 0.50 paise per points, and this increase in the VDA would not be retrospective but it should be effected from the date of award.

The management in the written submissions has claimed that there should not be any change in the present wage structure and what is being paid to the workmen is just and proper. Upon a careful consideration of the facts and evidence on record and the present trend of rising prices, it appears that the wage structure requires revision and the claim as shown in the schedule to the Government reference should be accepted as it is, the only question being from which day it should be made applicable and I state that the same should be made applicable from 1.1.1982 onwards. The demands were referred to this Tribunal in 1977 so it would be proper to award the annual increments to the workmen for the preceding five years in the old scale. So while fixing the wages of the workmen as on 1.1.1982 the increments earned by them during the past five years under old scales should be added to the new scales and the wages be fixed accordingly as on 1.1.1982. The future increments from 1.1.1982 onwards would be governed by the scales now awarded and the current wages of the workmen placed in the five categories should be fixed by adding the increments from 1982 onwards and their wages be fixed accordingly on 1.10.1989 as the workmen shall get the difference in pay arising out of the fixation of their wages as on 1.10.1989. About the night shift allowance I have already rejected the same and about the increase in V.D.A. the same shall be operative from 1.10.1989 onwards.

The different charts submitted before me show the present emoluments earned by the 66 workmen and their wages should be fixed considering the norms shown above and the workmen shall get the wages accordingly from 1.10.1989 onwards. The difference of pay arising out of the revision of scales shall be paid to the workmen on 1.10.89. I therefore answer the issues accordingly and hold that the demands as mentioned in the order of reference made by the workmen/party I are legal and justified and while answering issue No.2 I hold that the wages paid by the employer/Party

II to the workmen are not fair and reasonable and while answering issue No. 3, I hold that the employer has failed to prove that financial position does not permit them to improve the wage structure of the workmen as demanded by them. In this context following the observations of the Supreme Court in the case of Indian Oxygen reported in 1963 II LLJ page 83, I hold that the point that 'unless there is a change in the circumstances there would be no reason to revise the wage scale' is not proper and what the Tribunal has to see is whether the D.A. at the best could neutralise the cost of living fully. Thus when the cost of living has gone up the Tribunal has to consider the case of revising the wage scales and in this context it has to be seen whether the demands made are just and proper. Some evidence on the part of the management regarding its financial position would have been of great help regarding the financial implications of the revision of the wage scales. The management has admitted that the present unit of Casa J.D. Fernandes is well up and better placed than the other two Units and new modern machines are introduced in this unit to make it more liable financially and ultimately to make it a more profitable concern. Considering this aspect also I feel the demand for revision of wage scales is just and proper. With this, I answer the Government reference accordingly and pass the following order:

#### O R D E R

It is hereby held that the demands of the workmen of M/s Casa J.D. Fernandes, Panaji, Goa, as shown in the schedule are legal and justified. The demands for the revision of wages in different categories of workmen are as shown below:

Group	Factory staff	Scales
1	2	3
I	Lino Operator, Camera Operator, Printer, Foreman, Composing Supervisor, Binding Dept, in Charge, General Mechanic of Printing Machinery etc.	Rs. 350-30-480 - 35-690-40 - 770.
II	Lino compositor, Hand Compositor, Half Tone Etcher, Moulder, Driver, Treadle Machineman, Display compositor, Binder, Stitching Machineman, Ruling Machineman, Perforator, Pinnering Machineman, Paper Cutter etc.	Rs. 305-25-405- 30-525-35- 575
III	Lino Baller, Dark Room Assistant Distributor, Block Room Assistant, Plate Grinder, Proof Ruller, Lead Melter, Numberer, Line Etcher, Platemaker, Cutter.	Rs. 240-15-255 - -20-395-25- -475.
IV	Semi Skilled baller, Oilman, Paper Folder etc.	Rs. 180-10-200- 121-250-15- 290-20-375.
V	Bearer, Peon, sweeper, and other menial worker.	Rs. 120-5-180- 7-195-10-215.

These scales shall be applicable to the workmen falling in the five categories retrospectively with effect from 1.1.1982. While placing the workmen in the above categories the annual increments earned by them for the preceding five years in the old scales shall be fixed on 1.1.1982 and their salaries shall be fixed accordingly as on 1.1.1982. The workmen of the five categories shown in the schedule and at present doing the work of the five categories shall be placed in these categories and their scales be fixed accordingly.

The payment of Dearness Allowance is also held to be just and proper and the Dearness Allowance is awarded on the following basis:

Range of Basic Salary	D.A. applicable
Rs. 100 to 200	110.00
Rs. 201 to 300	130.00
Rs. 301 to 400	150.00
Rs. 401 to 500	170.00
Rs. 501 to 600	190.00
Rs. 600 and above	210.00

The request for payment for Night Shift Allowance stands rejected.

The workmen are entitled to Variable Dearness Allowance. At present the management is paying Variable Dearness Allowance at the rate of 0.40 paise per point and this should be increased at 0.50 paise per point with effect from 1.9.1989.

There shall be no order as to costs.

Inform the Government accordingly, about the passing of the award.

S. V. NEVAGI  
PRESIDING OFFICER  
INDUSTRIAL TRIBUNAL

#### O R D E R

No. 28/58/86-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour)

Panaji, 13th December, 1989.

In the Industrial Tribunal

Government of Goa

At Panaji

(BEFORE SHRI S.V.NEVAGI, HON'BLE PRESIDING OFFICER)  
Ref.No. IT/13/87

Shri Digambar B. Sawant ... Workman

V/s

M/s The Goa Detective & Security Services ... Employer

Employer represented by Adv. B.G.Kamat.

Panaji, Dated.: 11.11.89

A W A R D

This is a reference received from the Govt. of Goa, by its order No.28/58/86-ILD dated April 3, 1987 with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s The Goa Detective & Security Services, Colmorod, Navelim, Salcete-Goa, in terminating the services of Shri Digambar R. Sawant, security Guard w.e.f. 24.2.1986 is legal and justified?

If not, to what relief the workman is entitled to?"

This is a Govt. reference in which the workman has a half hearted approach to the case. As seen from the Govt. reference the case made out by him seems to be that of termination of the service w.e.f. 24.2.86. However in his deposition recorded before me on 15.7.88 he made out a case that due to the sudden illness of his mother he took her to doctor between 20th Feb., to 22nd Feb., obviously without taking proper leave. When he sought to rejoin on 23rd Feb., 1986 his explanation was asked for followed by a show cause notice dated 25th Feb., 1986. He did not join the duty thereafter. He, in his cross examination admits that he was assigned a duty between 23.2.86 to 24.2.86 from 10.00 p.m. to 6.00 a.m. and he was absent. He also admits that he was absent on 24th Feb., 1986 and on 25th Feb., 1986 in the first shift. He however worked in the third shift on 25.2.86, when show cause notice Exb. E-2 was given to him. Thereafter he worked on 28.2.86 in the second shift as admitted in the cross examination. He further admitted that during the period he had joined the home guard and he was supposed to go on duty whenever he was required by them. This is the evidence of the workman recorded till 15.7.88. Thereafter the workman, it seems, lost interest in the matter. He changed his labour consultants. Initially Shri Naik was his labour consultant who took steps to produce him in court but ultimately Shri Naik withdrew on 15.7.89 and a notice was sent to him at the instance of the court which returned as 'addressee not present'.

Before that Shri Gadge was appearing for him and it is known that Shri Gadge is not attending the courts on account of ill health. The matter was repeatedly adjourned to 24.8.89 and 28.9.89 and lastly today when the evidence for the employer namely the evidence of the Proprietor Shri Atmaram Amonkar is recorded. The employer has made out a case that since 25th Feb., 1986 the workman has continuously remained absent and he has proved this by producing muster roll Exb.E-1. He also tried to contact the workman by sending messengers and thereafter he sent as many as 3 letters by Regd. post all of them returned unserved. He also received a letter of the Dy. HomeGuard Commander Exb.E-5 dated 30.9.86 informing that the Workman Digambar B. Sawant is attached at Home Guard Volunteer at Margao Division since 1984. With this the employer has made out a positive case that the workman has abandoned the service and there was no question of terminating the services. Hence the termination if any has to be held as just and legal in the circumstances of the case. Hence I pass the following award:

O R D E R

It is hereby held that the action of the management of M/s The Goa Detective and Security Services, Colmorod, Navelim, Salcete-Goa, in terminating the services of Shri Digambar B. Sawant, Security Guard w.e.f. to 24.2.86 is legal and justified as the workman has abandoned the service voluntarily.

In the circumstances the workman will not be entitled to any relief in this matter of Govt. reference.

No order as to costs. Inform the Govt. accordingly about the passing of the award.

S. V. NEVAGI  
PRESIDING OFFICER  
INDUSTRIAL TRIBUNAL

O R D E R

No.28/34/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

Subhash V. Elekar, Under Secretary (Labour).

By order and in the name of the Governor of Goa.

Panaji, 9th February, 1990.

In the Industrial Tribunal

Government of Goa

At Panaji

(BEFORE SHRI S.V.NEVAGI, HON'BLE PRESIDING OFFICER)  
Ref. No. IT/57/89

Shri G.V.Morje ... Workman/Party I  
V/s  
M/s M.R.F. Ltd. ... Employer/Party II  
Workman absent  
Employer represented by Adv. G.K.Sardesai

ORDER

No.28/7/88-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

PANAJI, DATED: 17.1.1990.

A W A R D

This is a reference made by the Government of Goa by its order No. 28/34/89-LAB dated 17th August, 1989 with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s. M.R.F.Limited, Usgao, Ponda, Goa in terminating the services of Shri G.V.Morje, Tyre Builder operator with effect from 30-5-1988 is legal and justified? If not to what relief the workman is entitled?"

In this matter of Government reference the question was whether the termination of service of the workman was just and legal. On the day of return of notices the workman appeared and the advocate for the management presented the memo. of out of Court settlement dt. 22.9.89 Exh 2 colly. The workman admitted the terms of the settlement but disputed the clause of signature. So the matter stood adjourned for claim statement of the workman. The workman thereafter continuously remained absent since 10.11.89 and today the evidence of management's witness Roy Saldanha, the Personnel Officer is recorded. He has proved the clauses of the settlement and the two vouchers Exh 4 (E) colly to prove the payment of Rs. 2,000 dated 27.7.89 and Rs.1000/- dt. 10.8.89. There is also the letter of resignation signed by the workman G.V. Morje curiously his resignation letter is undated. However the management has produced letter Exh 5 dated 27.7.89 informing the workman that his resignation was accepted and he was relieved from service with immediate effect. The settlement is also of same date. So I take it that the workman who has voluntarily tendered his resignation is no more interested in the reinstatement. Hence the following order:

ORDER

In view of the out of Court settlement and resignation tendered by the workman it is hereby held that the action of the management of M/s M.R.F. Ltd., Usgao, Ponda Goa in terminating the services of Shri G.V.Morje tyre builder operator w.e.f. 30.5.88 is legal and justified. In view of the cash payment of Rs. 3,000 he is not entitled to any other relief in this reference.

No order as to costs. Inform the Government about the passing of the award.

S.V.NEVAGI  
Presiding Officer

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 13th December, 1989.

In the Industrial Tribunal

Government of Goa

At Panaji

(BEFORE SHRI S.V.NEVAGI, HON'BLE PRESIDING OFFICER)  
Ref. No. IT/13/88

Shri Namdeo S. Palav .... Workman/Party I

V/s

M/s. Adarsha Knives and Allied ... Employer/Party II  
Products

PANAJI, DATED: 8.11.1989

A W A R D

This is a reference made by the Government of Goa, by its order No. 28/7/88-ILD dated 29.3.1988 with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s. Adarsha Knives and Allied Products, Tivim, in terminating the services of Shri Namdeo S. Palav. Grinder, with effect from 31st August, 1986 is legal and justified?

If not, what relief the workman is entitled to?"

After the Government reference was registered notices were issued to the parties. It appears that the industry by known as Adarsha Knives and Allied Products has closed its production due to the infighting between the partners. The repeated notices sent to them have returned unserved and the workman was asked to give correct and proper address. The workman appeared for the few first dates and for the last two consecutive dates the workman remained absent as he had it appears lost interest in the matter. On 28.7.89 a fresh notice was sent to the employer on the address furnished by the workman. The matter was fixed on 30.8.89 and the registered notice returned with the postal remarks 'Intimation issued not found'. The workman

was absent on that day. Still the matter was adjourned to 9.10.89. The workman was absent even on that day. Still the matter was adjourned till today and the workman has remained absent.

It appears that the workman has lost interest in the matter. From the letter of the employer namely partner G.S.Mahadik sent by Registered post Exh-3 dated 15.11.88 it appears that the employee namely Party I Workman was given one month's notice pay and other allowances while terminating his service. So also the workman was given Rs. 1000 as loan for marriage which the workman started saying was a marriage gift. Anyway it seems that there was a dispute between the workman and the employer regarding the payment and re-payment and from the position as it stands no body is interested in the matter of Government reference. Under the given circumstances the termination has to be held to be just and proper in the absence of the active participation of the workman in the proceedings. Hence the following Award:

A W A R D

It is hereby held that the termination of the services of the workman is just and proper in the given circumstances and the workman is not entitled to any relief in this Govt. reference.

No order as to costs.

Inform the Government accordingly.

S.V.NEVAGI  
Presiding Officer  
Industrial Tribunal

O R D E R

No 28/788-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

( BEFORE SHRI S. V. NEVAGI, HON'BLE  
PRESIDING OFFICER )

Ref.No.IT/5/74

Shri Cornelio Pereira ... Workman/Party I  
V/s

M/s Goa Shipyard Ltd. ... Employer/Party II

Employer represented by Adv. P.J.Kamat.

PANAJI, DATED., 5th OCTOBER, 1989.

A W A R D

This is a reference made by the Govt. of Goa, by its order No.LC/1/ID(161)/72-73/1499 dated 22nd December, 1973 with an annexure scheduled thereto which reads as follows:

"Whether the action of the Management of M/s Goa Shipyard Ltd., Vasco da Gama, in demoting Shri Cornelio Pereira from Charge Hand to Leading Hand with effect from 20.1.1971 was justified ?

If not, to what relief is the workman entitled?"

As per the above Govt. reference this Tribunal was supposed to consider whether the action of the management of M/s Goa Shipyard Ltd., Vasco, Goa, in demoting the workman Cornelio Pereira from charge hand to leading hand w.e.f. 20.1.71 was justified or not. After the demotion of the workman as above the management had terminated the services of the workman and the Govt. had made a reference as regards this termination and that reference is IT/13/84 and that Govt. reference is being considered along with this reference. Today the parties filed a Memo of settlement before this tribunal and as per this memo of settlement the companion proceeding in IT/13/84 is disposed off separately. That was a matter as regards the termination and the workman has accepted the order of termination. In view of this there is no question of considering the question as regards the demotion which is the main point involved in this reference. Hence this reference is being disposed off as no surviving. Hence the following order:

O R D E R

It is hereby held that the question whether the action of the management of M/s Goa Shipyard Ltd., Vasco-da-Gama, Goa, in demoting Shri Cornelio Pereira from Charge-Hand to Leading Hand w.e.f. 20.1.71 does not survive for consideration in view of the confirmation of the order of his termination from service which was a subject matter in companion IT 13 84.

There shall be no order as to costs. Inform the Govt. accordingly about the passing of the award.

( S. V. NEVAGI )  
PRESIDING OFFICER  
INDUSTRIAL TRIBUNAL